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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/849,785	05/04/2001	James T. Cash	MT-123	8861

7590

05/09/2003

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EXAMINER

TRAN, HIEN THI

ART UNIT

PAPER NUMBER

1764

9

DATE MAILED: 05/09/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/849,785

Applicant(s)

CASH, JAMES T.

Examiner

Hien Tran

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 8-13 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 8-13 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☒ The proposed drawing correction filed on 04 March 2003 is: a) ☒ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: .

DETAILED ACTION

Election/Restrictions

1. The cancellation of the non-elected invention, claims 1-7, and 14, is acknowledged.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 8, 11-13 are rejected under 35 U.S.C. 102(b) as being anticipated by Houston (5,692,892).

Houston discloses a regenerative thermal oxidizer comprising: a combustion zone 19; a first heat exchange bed 13 containing heat exchange media and in communication with the combustion zone 19; a second heat exchange bed 14 containing heat exchange media and in communication with said combustion zone 19; means 21 for causing gas to flow into the duct; a valve 12 for alternating the flow of gas between said first and second heat exchange beds; said valve comprising a radial duct 47 enclosed by an outer housing (outer wall of 39), a ring seal having bore adapted to allow gas flow to or from said duct 47 and form a seal with the housing 39, valve ports 31, 32 connected to the first and second heat exchange beds, respectively, inlet and outlet manifolds 51, 52; drive means 41 for rotating the valve (see, for example, Figs. 2, 3, 9, 10).

Instant claims 8, 11-13 structurally read on the apparatus of Houston.

Allowable Subject Matter

4. Claims 9-10 would be allowable if rewritten to include all of the limitations of the base claim and any intervening claims, and to file the Terminal disclaimer to overcome the double patenting rejection.

5. The following is a statement of reasons for the indication of allowable subject matter: the prior art of record does not teach the cold face plenum having at least one baffle for dividing the first and second valve ports into a plurality of chambers.

Double Patenting

6. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

7. Claims 8-13 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-10 of U.S. Patent No. 6,261,092. Although the conflicting claims are not identical, they are not patentably distinct from each other because they are directed to the same conceptual invention.

The '092 patent is silent as to whether the radial duct may be enclosed by the housing. However, such is inherent therein to hold all elements of the seal in place since claim 5 of '092 patent requires the drive shaft coupled to the radial duct 83, the outer ring seal/housing wall 110,

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an inner ring seal 116 spaced from the outer ring seal and having bores, at least one piston ring positioned in the bores in the inner ring seal and biasing against the outer ring seal; and drive means for causing gas to flow into the shaft into said radial duct and between the piston ring and said inner ring seal.

Response to Arguments

8. Applicant's arguments filed 3/4/03 have been fully considered but they are not persuasive.

Applicant argues that Houston does not disclose the seal structure including a chamber defined between the seal ring 664 and housing 659, distribution groove 145 and the housing 659, arc 663 and the housing 659, and mounting ring 091 and the housing 659. However, the language of the claim is not commensurate in scope with such contention.

Applicant argues that the claims of '092 patent do not disclose the ring seal with radial duct to form a pressurized seal with the outer housing enclosing the duct. Such contention is not persuasive as claims 1-10 of the '092 patent discloses every structural elements recited in the instant claims. The '092 patent is silent as to whether the radial duct may be enclosed by the housing. However, such is inherent therein as set forth in the rejection above.

Conclusion

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after

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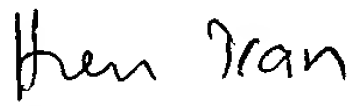
the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hien Tran whose telephone number is 308-4253. The examiner can normally be reached on Tuesday-Friday from 7:30AM-6:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glenn Caldarola can be reached on 308-6824. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9310 for regular communications and (703) 872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 308-0661.

HT
May 8, 2003


Hien Tran
Primary Examiner
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